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Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Haiti, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Lebanon, Lesotho, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sudan, Swaziland, Sweden, Thailand, the former Yugoslav Republic of Macedonia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela and Yugoslavia: draft resolution

Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would contribute significantly to universal economic cooperation among all States on a

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basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

Emphasizing the need for higher priority to be given to the work of the Commission in view of the increasing value of the modernization of international trade law for global economic development and thus for the maintenance of friendly relations among States,

Stressing the value of participation by States at all levels of economic development and from different legal systems in the process of harmonizing and unifying international trade law,

Having considered the report of the Commission on the work of its thirty-fourth session,[1]

Concerned that activities undertaken by other bodies of the United Nations system in the field of international trade law without coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law, as stated in its resolution 37/106 of 16 December 1982,

Stressing the importance of the further development of case law on United Nations Commission on International Trade Law texts in promoting the uniform application of the legal texts of the Commission and its value for government officials, practitioners and academics,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session;[1]

2. *Takes note with satisfaction* of the completion and adoption by the Commission of the draft Convention on the Assignment of Receivables in International Trade[2] and of the UNCITRAL Model Law on Electronic Signatures;[3]

3. *Takes note* of the progress made in the work of the Commission on arbitration and insolvency law and of its decision to commence work on electronic contracting, privately financed infrastructure projects, security interests and transport law, and expresses its appreciation to the Commission for its decision to adjust its working methods in order to accommodate the increased workload without endangering the high quality of its work;

4. *Expresses its appreciation* to the secretariat of the Commission for the publication and distribution of the *Legislative Guide on Privately Financed Infrastructure Projects*, calls upon the secretariat to ensure, in a joint effort with intergovernmental organizations such as the regional commissions of the United Nations, the United Nations Development Programme, the United Nations Industrial Development Organization, organizations of the World Bank Group and regional development banks to ensure wide dissemination of the *Legislative Guide*, and invites States to give favourable consideration to its provisions when revising or adopting legislation in that area;

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[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17).

[2] Ibid., annex I.

[3] Ibid., annex II.

5. *Appeals* to Governments that have not yet done so to reply to the questionnaire circulated by the Secretariat in relation to the legal regime governing the recognition and enforcement of foreign arbitral awards and, in particular, to the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;[4]

6. *Invites* States to nominate persons to work with the private foundation established to encourage assistance to the Commission from the private sector;

7. *Reaffirms* the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field and, in this connection:

(a) Calls upon all bodies of the United Nations system and invites other international organizations to bear in mind the mandate of the Commission and the need to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law;

(b) Recommends that the Commission, through its secretariat, continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law;

8. *Also reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission;

9. *Expresses the desirability* for increased efforts by the Commission, in sponsoring seminars and symposia, to provide such training and technical assistance, and, in this connection:

(a) Expresses its appreciation to the Commission for organizing seminars and briefing missions in Belarus, Burkina Faso, China, Colombia, Croatia, Cuba, the Dominican Republic, Egypt, Kenya, Lithuania, Peru, the Republic of Korea, Tunisia, Ukraine and Uzbekistan;

(b) Expresses its appreciation to the Governments whose contributions enabled the seminars and briefing missions to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in financing and organizing seminars and symposia, in particular in developing countries, and in the award of fellowships to candidates from developing countries to enable them to participate in such seminars and symposia;

10. *Appeals* to the United Nations Development Programme and other bodies responsible for development assistance, such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development, as well as to Governments in their bilateral aid programmes, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

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[4] United Nations, *Treaty Series*, vol. 330, No. 4739.

11. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General;

12. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the fifty-sixth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

13. *Reiterates*, in view of the increased work programme of the Commission, its request to the Secretary-General to strengthen the secretariat of the Commission within the bounds of the resources available in the Organization so as to ensure and enhance the effective implementation of the programme of the Commission;

14. *Requests* the Secretary-General to adjust the terms of reference of the UNCITRAL Trust Fund for Symposia so as to make it possible for the resources in the Trust Fund to be also used for the financing of training and technical assistance activities undertaken by the Secretariat;

15. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to those conventions.

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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Rohan **Perera** (Sri Lanka)

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I. Introduction

1. The General Assembly, in its resolution 55/158 of 12 December 2000, inter alia, decided that the Ad Hoc Committee established by resolution 51/210 of 17 December 1996 should meet from 12 to 23 February 2001 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. It further decided that the work should continue during the fifty-sixth session of the General Assembly between 15 and 26 October 2001, within the framework of a working group of the Sixth Committee.

2. Accordingly, the Sixth Committee, at its 2nd meeting, on 8 October 2001, established such a Working Group and re-elected Mr. Rohan Perera (Sri Lanka) as its Chairman.

3. The Sixth Committee, also at its 2nd meeting, decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. At its 1st meeting, on 16 October 2001, the Working Group noted the intention of the representatives of the International Committee of the Red Cross and the International Criminal Police Organization (Interpol) to participate in its discussions as observers.

4. The Working Group held five meetings, from 15 to 26 October 2001.

5. The Working Group had before it the report of the Ad Hoc Committee on the work of its fifth session[1] containing, inter alia, a discussion paper prepared by the Bureau of the Ad Hoc Committee on articles 3, 8 and 11,[2] and a reference paper prepared by India on articles 4, 5, 9, 10, 12 and 13;[3] as well as the report of the Working Group of the Sixth Committee, issued at the fifty-fifth session of the General Assembly,[4] containing, inter alia, a working document submitted and partially revised by India on the draft comprehensive convention on international terrorism.[5] The Working Group also had before it the report of the Working Group of the Sixth Committee issued at the fifty-third session of the General Assembly,[6] containing a revised text of the draft convention on the suppression of acts of nuclear terrorism, proposed by the Friends of the Chairman.[7]

6. The Working Group also had before it oral and written proposals submitted during its meetings. The texts of the written proposals are contained in annex II to the present report. A list of written amendments and proposals submitted by delegations to the fifth session of the Ad Hoc Committee and to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, in connection with the elaboration of a draft comprehensive convention on international terrorism, is contained in annex III.

7. A request was made to circulate the comments by the United Nations High Commissioner for Refugees relating to the draft comprehensive convention on international terrorism,[8] for the information of delegations.

8. The report of the Working Group was considered and adopted by the Working Group at its 5th meeting, held on 26 October.

II. Proceedings of the Working Group

9. At its 1st meeting, on 15 October, the Working Group was addressed by the Legal Counsel of the United Nations, Mr. Hans Corell. The Working Group then held a general exchange of views on issues within its mandate, pursuant to paragraphs 13 and 14 of General Assembly resolution 55/158. The general exchange of views was concluded at the 2nd meeting of the Working Group, held on the same day. Annex V to the present report contains an informal summary of the general exchange of views, prepared by the Chairman. The summary is intended for reference purposes only, and not as a record of the discussions.

10. Discussions were subsequently held both in the Working Group and in informal consultations.

A. Elaboration of a comprehensive convention on international terrorism

11. The Working Group continued its work on the elaboration of a draft comprehensive convention on international terrorism on the basis of the text submitted by India contained in annex II to the report of the Working Group.[4] At its 2nd meeting, the Working Group considered draft articles 14 to 17 and 19 to 22. The discussions on these and other draft articles were continued in informal consultations. On the basis of those discussions, a discussion paper on articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22 was prepared by the Friends of the Chairman (A/C.6/56/WG.1/CRP.3). These articles, together with article 23, were subsequently reviewed in informal consultations.

12. At the 4th meeting of the Working Group, on 25 October 2001, the coordinators of the informal consultations on articles 3 to 17 and 19 to 23, as well as on articles 2, 2 bis and 18, presented oral reports to the Working Group.

13. Following the informal consultations and taking into account the comments and written proposals by delegations, the Friends of the Chairman prepared revised texts of articles 3 to 17 bis and 20 to 27 (see annex I.A). In addition, the coordinator prepared informal texts for articles 2 and 2 bis (see annex I.B).

14. At the 5th meeting of the Working Group, on 26 October 2001, the Chairman noted that the texts in document A/C.6/55/WG.1/L.2, annex II, would continue to serve, together with all written and oral proposals, as a reference for future discussions on the preamble and articles 1 and 18. He stated further that articles 2, 2 bis and 18 were interrelated and were negotiated as a package. Their final outcome would depend on consensus being reached on all of them. The Chairman also recalled that annexes II and III to the draft comprehensive convention on international terrorism submitted by India (A/C.6/55/L.2, annex II) were part of the travaux préparatoires and might be used in the future by interested States.

B. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

15. At its 1st meeting, the Chairman of the Working Group observed that while the text of the draft international convention had been substantially completed, the

question of the scope of its application remained to be resolved. He stressed that the finalization of the work on the draft convention depended primarily on the political will to reach a compromise on the outstanding issues and he urged delegations to demonstrate the necessary flexibility in order to bring the negotiation of the instrument to a successful conclusion at the current session of the Working Group.

16. The Chairman appointed Mr. Richard Rowe (Australia) as the new coordinator for the draft convention to replace Ms. Cate Steains (Australia), who was no longer available to act in that capacity. The Working Group paid tribute to Ms. Steains for her valuable contribution to the work on the draft convention.

17. Discussions on the draft convention were held in informal consultations. At the 4th meeting of the Working Group, the coordinator for the draft convention presented an oral report to the Working Group.

C. Question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

18. At the 1st meeting of the Working Group, the Chairman reminded delegations that several speakers had referred to the question of convening a high-level conference during the recent debate in the plenary of the General Assembly on measures to eliminate international terrorism. He drew the attention of the Working Group to the relevant sections of the report of the Ad Hoc Committee[2] and invited all interested delegations to continue their efforts aimed at advancing the work on the question. The Chairman also encouraged delegations to approach him with any concrete proposals on the matter.

III. Recommendations and conclusions

19. At its 5th meeting, on 26 October 2001, the Working Group decided to refer the consideration of the present report to the Sixth Committee. The Working Group also decided, bearing in mind General Assembly resolution 55/158, to recommend to the Sixth Committee that work should continue as a matter of urgency on the elaboration of a draft comprehensive convention on international terrorism, building upon the work accomplished during the meetings of the Working Group.

20. Also at its 5th meeting, the Working Group decided to recommend that the coordinator for the draft international convention for the suppression of acts of nuclear terrorism should continue consultations on the draft convention and report to the Sixth Committee on those consultations.

Notes

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37).

[2] Ibid., annex I.

[3] Ibid., annex II.

[4] A/C.6/55/L.2.

[5] Ibid., annexes I and II.

[6] A/C.6/53/L.4.

[7] Ibid., annex I.

[8] A/C.6/56/WG.1/INF/1.

Annex I

A. Revised text of articles 3 to 17 bis and 20 to 27, prepared by the Friends of the Chairman

Draft comprehensive convention on international terrorism

Article 1

...

Article 2

...

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 8 and 12 to 16 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in article 2;

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and where it does not extradite such a person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7[1]

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international human rights law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence referred to in article 2.

Article 8

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their national law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

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[1] The following paragraph will be added to the preamble:

"*Noting* that the Convention relating to the Status of Refugees signed at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees done at New York on 31 January 1967 do not provide a basis for the protection of perpetrators of terrorist acts, and stressing the importance of the full compliance by the parties to those instruments with the obligations embodied therein, including, in particular, the principle of non-refoulement,".

Article 9

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence referred to in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, paragraph 1, subparagraph (c), or paragraph 2, subparagraph (a), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested

States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in whose territory the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite the person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case, without undue delay, to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and that State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 9.

Article 14

None of the offences referred to in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

1. The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request from another State Party with which it has no extradition treaty, the requested State may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences between themselves, subject to the conditions provided for by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 17 bis

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or its applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 18

...

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 21

[*Deleted*]

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from ... to ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which such notification is received by the Secretary-General of the United Nations.

Article 27

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on ... 2001.

B. Informal texts of articles 2 and 2 bis, prepared by the Coordinator[2]

Article 2

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 2 bis

Where this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both treaties, the provisions of the latter shall prevail.

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[2] These texts represent the stage of consideration reached at the current session. It is understood that further consideration will be given to these texts in future discussions, including on outstanding issues.

Annex II

A. Written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention on international terrorism

Country/submitter	*Symbol*	*Subject*
1. Guatemala	A/C.6/56/WG.1/CRP.1 and Corr.1 (English only)	Revised version of document A/C.6/56/L.2: additional article (provisionally numbered 22A)
2. Hungary	A/C.6/56/WG.1/CRP.2	Article 2
3. Friends of the Chairman	A/C.6/56/WG.1/CRP.3	Revised texts of articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22
4. Colombia	A/C.6/56/WG.1/CRP.4	New preambular paragraph 1
5. -	A/C.6/56/WG.1/CRP.5 and Add.1-5	Draft report of the Working Group
6. Holy See	A/C.6/56/WG.1/CRP.6	Article 10, paragraph 4 bis
7. Holy See	A/C.6/56/WG.1/CRP.8[1]	Article 12

1. Proposal submitted by Guatemala[2] (A/C.6/56/WG.1/CRP.1 and Corr.1)

Additional article (provisionally numbered 22A)

Whenever an offence has occurred to which this Convention and any particular one of the treaties enumerated in the preamble to this Convention, or any other future more specific counter-terrorism treaty, apply, the two treaties shall, as between States parties to both of them, be applied; provided, however, that, should any incompatibility exist between particular provisions of the two treaties, those of this Convention shall prevail, that any provision of this Convention or any of the other treaties mentioned that defines the scope of application of the treaty containing it shall apply only to that treaty, and that joint application is not mandatory insofar as the sanctioning of individual offences is concerned.

Explanatory remarks

1. With regard to the important question of the relationship between the *comprehensive* convention against terrorism whose elaboration is now being sought, the 12 previous international treaties on aspects of the same topic, and any future international instrument of this kind, the delegation of Guatemala takes the view that

[1] Document A/C.6/56/WG.1/CRP.7 was withdrawn.

[2] Revised version of proposal No. 1 in A/C.6/55/L.2, annex III.

as far as possible, the impact of the comprehensive convention should be combined with that of the others. In this way, if an offence occurs which is covered by the comprehensive treaty and by one of the sectoral treaties, so that we have what are called overlapping offences, the provisions of both treaties should in principle be applied as far as possible. In this manner the comprehensive convention, which enriches the content of the sectoral treaties and is in turn enriched by them, would maximize the impact of the international struggle against terrorism (thus ensuring that the future convention truly deserves to be called a comprehensive, rather than a complementary, one). It might also be thought that because, technically speaking, the provisions of the comprehensive instrument represent what might be regarded as state-of-the-art international legal rules against terrorism, the comprehensive convention should prevail in any situation where it is incompatible with one of the applicable sectoral treaties.

2. These were the ideas underlying the additional draft article which the delegation of Guatemala submitted to the Working Group at its latest session (see proposal No. 1 in annex III to the report of the Working Group on its 2000 session (A/C.6/55/L.2)).

3. The delegation of Guatemala is aware, however, that its proposal seems capable of causing difficulties. These difficulties have been explained in statements since made by other delegations, especially during this year's session of the Ad Hoc Committee established by General Assembly resolution 51/210. Reference was made in these statements to cases in which certain rules contained in a comprehensive convention against terrorism could not prevail over rules embodied in sectoral treaties without creating difficulties for national authorities in respect of their practical application. These considerations are summarized in paragraph 20 of annex V of the relevant report of the Committee.[3]

4. The delegation of Guatemala understands that the difficulties in question derive largely from the fact that some States have, in respect of each international anti-terrorism treaty to which they are parties, adopted legislation incorporating its provisions into their domestic law. This would mean that if a comprehensive anti-terrorism treaty were adopted and they became parties to it, they could not, in respect of offences to which both the comprehensive convention and one of the sectoral ones applied, create a kind of "cocktail" combining elements of both treaties. It seems to the delegation of Guatemala, however, that the difficulties that may arise from this are not insuperable. All that would be required, if the article now proposed by Guatemala were included in the comprehensive convention, would be for each of these States, in acceding to the comprehensive convention, to incorporate the text of this article, mutatis mutandis, into its domestic legislation. It is important to note that in taking that step, a State would not be acting for reasons of mere expediency; it would be giving effect to *an obligation* imposed on it by general international law (unless the provisions of treaties to which it is a party are automatically incorporated into its domestic law).

5. It has been observed (see annex V, para. 20, of the above-mentioned report of the Ad Hoc Committee), that the absence in some sectoral conventions of provisions which will probably feature in the comprehensive convention was deliberate, and that therefore the gaps in the sectoral conventions should not be filled in. But such

[3] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37).

cases, should they exist, are not a reason to reject the additional article proposed by Guatemala. It would in fact be sufficient to add to that article a paragraph identifying the provisions in question and exempting them from the cumulative application of the comprehensive convention and the relevant sectoral convention.

6. The difference between the first sentence of the new proposal by Guatemala and the first sentence of the initial proposal is explained by the usefulness of indicating when and in what circumstances the issue of the relationship between the comprehensive convention and one of the sectoral conventions specifically arises.

7. Some examples given below should illustrate the foregoing remarks (and also shed light on the general issues pertaining to the relationship between a comprehensive convention and sectoral conventions). In view of the fact that no agreement has yet been reached on the text of a comprehensive convention, and that by comparison with the 10 sectoral conventions which preceded it, the International Convention for the Suppression of Terrorist Bombings (many of whose provisions will certainly appear in the future comprehensive convention) can be regarded as a treaty of *comprehensive* scope, the examples will refer to the relationship between that Convention and one of the sectoral treaties which preceded it, namely, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the 1988 Convention"). It will be assumed that the Terrorist Bombings Convention, none of whose clauses refers to its relationship with the previous sectoral treaties (which is certainly regrettable), contains an article, which we will call "article AA", identical in substance to the article now proposed by Guatemala for inclusion in the future comprehensive convention.

8. Let us imagine that a bomb placed for terrorist purposes on board a passenger ship registered in State A explodes, sinking the ship, which is then on the high seas. Let us also suppose that the perpetrator takes refuge in the territory of State B, and that both States A and B are parties to the Terrorist Bombings Convention and to the 1988 Convention.

9. In view of the provisions of article 1, paragraph 6, article 2, paragraph 1, and article 6, paragraph 1 (b), of the Terrorist Bombings Convention, and of article 3, paragraph 1 (c), and article 4, paragraph 1, of the 1988 Convention, the provisions of the two treaties defining the respective offences create an overlap between the two treaties. Article "AA" of the Terrorist Bombings Convention will then apply.

10. Under article AA, article 3 of the Terrorist Bombings Convention would apply to that Convention and only to that Convention, and article 4 of the 1988 Convention would apply to that Convention and only to that Convention. The effects of this clearly illustrate the advantages of the proposal by Guatemala. Let us suppose that in a case where a ship is sunk by the explosion of a bomb placed on board by a terrorist, the sinking occurs in the territorial sea of a State party to both Conventions. If the ship is navigating exclusively within that territorial sea, its route will not have taken it outside the latter, and the perpetrator is apprehended in the territory of the State in whose territorial sea the offence is committed, article 4 of the 1988 Convention will prevent the application of that Convention, but not the Terrorist Bombings Convention. Therefore, if any of the victims are of a nationality different from that of the perpetrator of the offence, the Terrorist Bombings Convention will apply under its article 3. If, on the other hand, all the victims are of the same nationality as the perpetrator, the Terrorist Bombings Convention will be

inapplicable under its article 3; however, the 1988 Convention will be applicable under its article 4, if the route the ship was due to take would have brought it into the high seas or into the territorial sea of another State. (In this case the situation will be the same as would arise from the adoption of any of the amendments submitted which, in cases of overlapping offences between the comprehensive convention and a sectoral convention, give primacy to the latter.)

11. If, in a specific case of overlapping offences between the Terrorist Bombings Convention and the 1988 Convention, the provisions that limit the former's scope with respect to the activities of military forces (last preambular paragraph, article 1, paragraph 4, and article 19, paragraph 2) prevent it from being applied, that will not prevent the application of the 1988 Convention since the latter does not contain equivalent provisions.[4] (In this case the situation would again be the same as would result from the adoption of any of the amendments submitted under which, in cases of overlapping offences between the comprehensive convention and a sectoral convention, the latter would prevail.)

12. Under article AA of the Terrorist Bombings Convention, article 6, paragraph 2, of that Convention and article 6, paragraph 2, of the 1988 Convention would apply cumulatively, to the extent that a State had availed itself of the options offered by each of them. (As in the cases described in paragraph 10 above, one of the two Conventions may be applicable while the other is not.)

13. Article 7 of the Terrorist Bombings Convention and article 7 of the 1988 Convention would apply cumulatively, thus resolving the slight discrepancies between the two articles by having the comprehensive convention prevail.[5]

14. The members of each of the following pairs can apply cumulatively: article 2 of the Terrorist Bombings Convention and article 3 of the 1988 Convention;[6] article 14 of the former and article 10, paragraph 2, of the latter; and article 8, paragraph 1, of the former and article 10, paragraph 1, of the latter.

15. Article 8, paragraph 2, and articles 11, 12 and 13 of the Terrorist Bombings Convention have no equivalents in the 1988 Convention. Therefore, they will apply in cases of overlapping offences between the two Conventions. The same is true of

[4] It is assumed that the case is not one in which article 2 of the 1988 Convention precludes its application.

[5] More specifically, paragraphs 1 and 2 of both articles would apply as indicated, as would article 7, paragraph 6, of the International Convention for the Suppression of Terrorist Bombings and article 7, paragraph 5, of the 1988 Convention. The provisions of article 7 of the Terrorist Bombings Convention which have no equivalent in article 7 of the 1988 Convention (i.e., para. 3 (c) and para. 5) would apply.

[6] Obviously, since subparagraphs (b) and (c) of article 2, paragraph 3, of the Terrorist Bombings Convention have no equivalent in the 1988 Convention, they cannot give rise to an overlapping offence between the two Conventions, that is, an offence to which both Conventions apply. They can, however, be related to an offence of that kind. If such an offence is committed, those subparagraphs would apply to anyone whose relationship to the perpetrator(s) is among those defined in them. As the first of the two alternatives contained in article 3, paragraph 2 (b), of the 1988 Convention has no equivalent in the Terrorist Bombings Convention, it is clear that whatever was said with regard to article 2, paragraph 3 (b) and (c), of that Convention applies, mutatis mutandis, to that alternative. (Of course, the above comment is of interest only if there really is a difference between the first and second alternatives contained in article 3, para. 2 (b), of the 1988 Convention.) This mutual reinforcement between the two Conventions is one of the benefits to be derived from article AA (the Guatemalan proposal).

article 8, article 11, paragraphs 5 and 6, and article 13, paragraph 2, of the 1988 Convention, which have no equivalents in the Terrorist Bombings Convention.

16. The previous examples may not include every possible combination of provisions of the Terrorist Bombings Convention and the 1988 Convention which might illustrate Guatemala's proposal. However, they will suffice to give an idea of how the proposal would function and to demonstrate its viability.

17. The Guatemalan delegation believes that this would be confirmed by a study of the consequences of cases of overlapping offences that may occur between the Terrorist Bombings Convention and other sectoral conventions (particularly the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.[7]

2. Proposal submitted by Hungary[8] (A/C.6/56/WG.1/CRP.2)

Article 2

Add a new paragraph, reading:

> The provisions of this Convention shall not apply if the act described in paragraph 1 constitutes an offence within the scope of a specific convention on terrorism when the States concerned are States parties to that convention, in which case the provisions of the specific convention shall apply.

Explanatory note

The proposal gives clear priority to already existing conventions if they are factually and legally applicable. It also extends the applicability of the comprehensive convention to cases where an act is covered by the specific convention but the latter is not applicable due to non-participation by any of the States concerned.

The comprehensive convention thereby complements the existing conventions, that is, fills in the gaps in a twofold manner:

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[7] Since most of the provisions of the comprehensive convention will doubtless coincide with those of the Terrorist Bombings Convention, it does not appear that there could be an overlapping offence between the two Conventions, or between the comprehensive convention and any of four previous sectoral conventions, namely: the 1963 Tokyo Convention on Offences and Certain Acts Committed on Board Aircraft, the 1980 Vienna Convention on the Physical Protection of Nuclear Material, the 1991 Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection and the 1999 International Convention for the Suppression of the Financing of Terrorism. Nor does it appear that there could be overlapping offences between the comprehensive convention and the 1979 International Convention against the Taking of Hostages. (It should be added that there may be overlapping offences between sectoral conventions concluded prior to the Terrorist Bombings Convention, such as the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and between international and regional counter-terrorism conventions.)

[8] Concerning the relationship between the present draft convention and other conventions on terrorism.

(a) First, it provides the framework to cover **criminal activity not already covered** by the existing conventions;

(b) Secondly, it provides the framework for cooperation with regard to **criminal activity already covered** by a specific convention **if** the States parties to the comprehensive convention are not all parties to the specific convention concerned.

3. Revised texts of articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17 bis, 20 and 22 prepared by the Friends of the Chairman (A/C.6/56/WG.1/CRP.3)

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction except that the provisions of articles 8 and 12 to 16 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5[9]

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

[9] While it is understood that all draft articles remain under discussion until final agreement has been reached on the whole text of the draft convention, several delegations were of the view that, in particular, an agreement on article 5 is linked to an agreement on the scope of the draft convention and the definition of terrorism.

2. A State may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result, within its territory, in the commission of an offence set forth in article 2;

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and where it does not extradite such a person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 7[10]

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international standards of human rights, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence referred to in article 2.

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[10] In the preamble the following paragraph will be added:

"*Noting* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 does not provide a basis for the protection of perpetrators of terrorist acts, and noting further in this context articles 1 (f), 2, 32 and 33 of that Convention, and stressing the importance of the full compliance with the obligations embodied in that Convention, including, in particular, the principle of non-refoulement,"

Article 8

1. States Parties shall cooperate in the prevention of the offences set forth in article 2, by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their national law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperation with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

Article 9

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence referred to in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory,

the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, paragraph 1, subparagraph (c), or paragraph 2, subparagraph (a), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in whose territory the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite the person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case, without undue delay, to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and that State and the State seeking the extradition of the person agree with this option and

other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. *States Parties which are not bound by a bilateral treaty or arrangement of mutual legal assistance may, at their discretion, apply the procedure set out in annex II.*

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 9.

Article 14

None of the offences referred to in article 2 *and the acts which constitute an offence within the scope of and as defined in one of the treaties listed in annex I* shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 *or for offences within the scope of and as defined in one of the treaties listed in annex I* or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17

1. The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request from another State Party with which it has no extradition treaty, the requested State may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences

between themselves, subject to the conditions provided for by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

6. *States Parties which, pursuant to paragraph 2 of this article, have agreed to consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2 may consider utilizing the procedures set out in annex III.*

Article 17 bis (former article 19)

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

4. Proposal submitted by Colombia[11] (A/C.6/56/WG.1/CRP.4)

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

5. Draft report of the Working Group (A/C.6/56/WG.1/CRP.5 and Add.1-5)

...

[11] Concerning a new preambular paragraph 1.

6. Proposal submitted by the Holy See (A/C.6/56/WG.1/CRP.6)

Article 10

New paragraph 4 bis

4 bis. Any person regarding whom the measures referred to in paragraph 2 are being taken shall also be entitled to receive visits from a qualified representative of any religion or belief of that person's choice.

7. Proposal submitted by the Holy See (A/C.6/56/WG.1/CRP.8)

Article 12

Add at the end of the paragraph:

"and, in particular, the Standard Minimum Rules for the Treatment of Prisoners".

B. Written amendments and proposals submitted by delegations in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism

Country	*Symbol*	*Subject*
Mexico	A/C.6/56/WG.1/CRP.9	Article 4

Proposal submitted by Mexico (A/C.6/56/WG.1/CRP.9)

Article 4, new paragraph

This Convention does not address, nor can it be interpreted as addressing, in any way the issue of the legality of the use or threat of use of nuclear weapons by States.

Annex III

A. List of written amendments and proposals submitted by delegations to the fifth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, in connection with the elaboration of a draft comprehensive convention on international terrorism[1]

Country	*Symbol*	*Subject*
1. Côte d'Ivoire	A/AC.252/2001/WP.1/Rev.1	Revised text of document A/C.6/55/WG.1/CRP.26
2. Chile	A/AC.252/2001/WP.2	Article 6, paragraph 1
3. Romania	A/AC.252/2001/WP.3	Article 1
4. Guatemala	A/AC.252/2001/WP.4	Article 2, paragraph 1
5. South Africa	A/AC.252/2001/WP.5	Article 2, paragraph 1
6. Holy See	A/AC.252/2001/WP.6	Article 10, paragraph 3
7. Pakistan	A/AC.252/2001/WP.7	New article on relationship
8. Hungary	A/AC.252/2001/WP.8	Article 8, paragraph 2, subparagraph b (ii)
9. Austria	A/AC.252/2001/WP.9	Article 8, paragraph 2
10. Hungary	A/AC.252/2001/WP.10	Article 13, paragraph 3

[1] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 37* (A/56/37), annex III.

B. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, in connection with the elaboration of a draft comprehensive convention on international terrorism[2]

Country	*Symbol*	*Subject*
1. Guatemala	A/C.6/55/WG.1/CRP.1/Rev.1	Additional article provisionally numbered 22 (a)
2. Costa Rica	A/C.6/55/WG.1/CRP.2	New preambular paragraph
3. Costa Rica	A/C.6/55/WG.1/CRP.3	Article 7
4. Colombia	A/C.6/55/WG.1/CRP.4/Rev.1	Article 2, paragraph 1
5. Australia and Belgium	A/C.6/55/WG.1/CRP.5	Article 2, paragraph 1
6. Belgium	A/C.6/55/WG.1/CRP.6	Article 7
7. Netherlands	A/C.6/55/WG.1/CRP.7	New paragraph 4 to article 2
8. India	A/C.6/55/WG.1/CRP.8	Revised texts of articles 1, 3, 6 and 11
9. Ukraine	A/C.6/55/WG.1/CRP.9	Article 1, paragraph 3
10. Germany	A/C.6/55/WG.1/CRP.10	Article 8, chapeau and lit. (a)
11. Austria, Belgium and Switzerland	A/C.6/55/WG.1/CRP.11	Article 14
12. Angola	A/C.6/55/WG.1/CRP.12/Rev.1	Article 8
13. Lebanon	A/C.6/55/WG.1/CRP.13	Article 2
14. Germany	A/C.6/55/WG.1/CRP.14	Article 3
15. Bolivia, Chile, Costa Rica and Ecuador	A/C.6/55/WG.1/CRP.15	Article 2
16. United Kingdom of Great Britain and Northern Ireland	A/C.6/55/WG.1/CRP.16	New article
17. India	A/C.6/55/WG.1/CRP.17	Revised text of article 8
18. Sudan	A/C.6/55/WG.1/CRP.18	Articles 2 and 3
19. Syrian Arab Republic	A/C.6/55/WG.1/CRP.19	Article 6, paragraph 2 (d) (A/C.6/55/WG.1/CRP.8)

[2] See A/C.6/55/L.2, annex III.

Country	*Symbol*	*Subject*
20. Lebanon	A/C.6/55/WG.1/CRP.20	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
21. Cameroon	A/C.6/55/WG.1/CRP.21	Article 11, paragraph 1
22. Sri Lanka and Turkey	A/C.6/55/WG.1/CRP.22 and Corr.1	Article 7
23. Draft report of the Working Group	A/C.6/55/WG.1/CRP.23 and Add.1-3	
24. Syrian Arab Republic	A/C.6/55/WG.1/CRP.24	Article 11, paragraph 2 (A/C.6/55/WG.1/CRP.8)
25. Cameroon	A/C.6/55/WG.1/CRP.25	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
26. Côte d'Ivoire	A/C.6/55/WG.1/CRP.26	Article 1
27. Switzerland	A/C.6/55/WG.1/CRP.27	New preambular paragraph
28. New Zealand and Switzerland	A/C.6/55/WG.1/CRP.28	Article 18, paragraph 2
29. Switzerland	A/C.6/55/WG.1/CRP.29	Article 7
30. Malaysia on behalf of the OIC Group	A/C.6/55/WG.1/CRP.30	Articles 1 and 2
31. Switzerland	A/C.6/55/WG.1/CRP.31	Article 2, paragraph 1
32. Austria	A/C.6/55/WG.1/CRP.32	Article 2, paragraph 1
33. Nigeria	A/C.6/55/WG.1/CRP.33	Article 2, paragraph 1
34. Angola	A/C.6/55/WG.1/CRP.34	Article 1
35. India	A/C.6/55/WG.1/CRP.35	Article 2
36. Qatar	A/C.6/55/WG.1/CRP.36	Article 18
37. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.37	New preambular paragraphs
38. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.38	Articles 1 and 18

Annex IV

Informal summary of the general discussion in the Working Group, prepared by the Chairman

1. All delegations stated their unequivocal condemnation of terrorism in all its forms and manifestations and underscored that international terrorism posed a global threat to international peace and security and to basic human values. They also emphasized that acts of terrorism were criminal and unjustifiable, wherever and by whomsoever committed, and regardless of their form, motive or origin. Delegations strongly condemned the terrorist attacks which had taken place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and which were characterized as heinous crimes against the entire human civilization and democratic societies. They expressed their condolences to the families of the victims and to the peoples of the United States of America and of the other countries whose nationals were victims of such an unprecedented crime.

2. It was further observed that the fight against terrorism required a global effort based on international cooperation and international law, with due regard for human rights, and that it must go hand in hand with the search for lasting solutions to the human tragedies and political problems contributing to the instability which nurtured terrorist groups.

3. In addition to reporting various activities being undertaken at the national, regional and international levels aimed at combating the scourge of terrorism, delegations expressed support for the role of the United Nations as the main multilateral mechanism for mobilizing the international community in its fight against terrorism. Delegations underscored the importance of the establishment of an effective international legal regime, in line with Security Council resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and recalled the various statements made during the General Assembly debate on measures to eliminate international terrorism, held from 1 to 5 October 2001. States were urged to become parties to the existing sectoral anti-terrorism conventions, to the extent that they had not already done so, including those elaborated within the framework of the Ad Hoc Committee, and to fully implement all such instruments.

A. Elaboration of a draft comprehensive convention on international terrorism

4. Delegations reiterated the urgency of adopting a comprehensive convention on international terrorism with the aim of extending and strengthening the existing legal regime against terrorism. There was agreement that, in the light of the recent terrorist acts in the host country, it was of vital importance that the Working Group should conclude its work on the comprehensive convention with a view to its adoption at the current session of the General Assembly. At the same time, concerns were expressed regarding the effectiveness of a future comprehensive convention if it was not universally accepted and if the underlying causes of terrorism were not addressed. The view was expressed that consistency with existing norms of international law, including those relating to international terrorism, was a necessary precondition for such universal acceptance.

5. Support was expressed for the draft text of the comprehensive convention submitted by the delegation of India, which was considered to be a solid basis for discussion in the Working Group. The hope was also expressed that all delegations would demonstrate the necessary political will and commitment, in a spirit of cooperation, so as to resolve outstanding issues.

6. With respect to the scope of the convention, several speakers favoured its broad application. Suggestions were made, inter alia, to include in the list of offences within the coverage of the convention terrorism in all its forms and manifestations, terrorist threats, acts causing serious damage to the environment and economy, as well as various derivative offences such as the undertaking of preparatory acts. It was also suggested that the acts of armed forces of States should not be excluded from the scope of the convention. Conversely, the view was expressed that the convention should not duplicate the provisions of the Charter of the United Nations or other norms of international law governing the conduct of States or replace the norms of international humanitarian law applicable to armed conflicts. It was observed that the main objective of the Working Group should be to further develop international rules concerning individual liability for terrorist crimes so that the perpetrators of such crimes could be brought to justice throughout the world.

7. Support was expressed for the approach taken in the draft text, i.e. opting for an operational definition of the perpetration of terrorist acts rather than attempting to define the phenomenon of terrorism. Others, in calling for a more comprehensive and exhaustive definition, pointed to some of the shortcomings of the draft text, for example that the proposed definition did not sufficiently cover certain offences and means for their commission, and that it failed to provide for the liability of legal persons. It was also suggested that the definition should be formulated in clear and specific terms so as to avoid ambiguity, politically motivated interpretations and selective application of the convention. The concern was expressed that the terms used for defining offences within the meaning of the convention were excessively broad, allowing for the criminalization of activities which otherwise would not have been considered to be a violation of international law. Several delegations insisted that the convention should unequivocally distinguish terrorism from the legitimate struggle in the exercise of self-determination and independence of all peoples under foreign occupation, and expressed support in that regard for the proposal contained in document A/C.6/55/WG.1/CRP.30.

8. Support was expressed for the inclusion of a provision clarifying the relationship of the comprehensive convention with existing sectoral conventions. It was suggested that the comprehensive convention should contribute added value to existing sectoral conventions by, inter alia, overcoming their shortcomings, while preserving the achievements of those conventions. The view was also expressed that the convention would be an important instrument in its own right and should be sufficiently forward-looking, so as to provide more efficient ways of combating existing and new forms of terrorism.

9. It was suggested that the convention should provide for an effective mechanism for cooperation among States in order to bring to justice the perpetrators of terrorist acts. In particular, it was observed that States should ensure the apprehension and prosecution or extradition of such persons. States were also called upon to prevent abuse of the right of asylum and not to provide refuge to persons

involved in terrorist acts. It was reiterated that political motivations should not constitute grounds for States to refuse requests for extradition of the perpetrators. At the same time, it was noted that the relevant provisions of the convention should be carefully drafted so as to conform with universally recognized human rights and the right of States to grant asylum in conformity with international law.

B. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

10. Delegations reiterated their support for the speedy finalization of the draft international convention for the suppression of acts of nuclear terrorism and for the early adoption of the convention. It was observed that the risk that certain terrorist groups might already have obtained access to weapons of mass destruction and could resort to their use added urgency to this task. Delegations were called upon to continue, in the spirit of compromise and constructive cooperation, searching for broadly acceptable solutions with regard to the outstanding issues of the scope of application of the convention. It was noted in that regard that the completion of the work on a comprehensive convention on international terrorism should facilitate the work on the finalization of an international convention on nuclear terrorism. Support was voiced for the continuation of informal consultations on the topic, under the guidance of the coordinator.

C. Question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

11. Support was reaffirmed for the proposal to convene a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. At the same time, the importance of evaluating the objectives and possible outcome of such a conference was emphasized. Several delegations indicated their willingness to participate in the discussion of the question of convening the proposed conference insofar as it could lead to a tangible strengthening of international cooperation in combating the scourge of international terrorism.

12. A view was expressed that the conference should result in the adoption of concrete measures aimed at combating terrorism. Statements were made in favour of convening such a conference after the completion of the negotiations on the comprehensive convention on international terrorism, so as to promote its universal acceptance and implementation together with sectoral conventions in the field. It was suggested that the comprehensive convention on international terrorism and the convention for the suppression of acts of nuclear terrorism could be adopted at the conference, or that a signing ceremony could be held at the conference. Similarly, it was pointed out that the conference could focus on the elaboration of a global plan of action aimed at promoting and implementing relevant international instruments adopted under the auspices of the United Nations. It was also observed that organizing a meeting of government experts from various national anti-terrorist agencies could usefully contribute to the preparation of such a conference. A further

view was expressed that the proposed conference should examine the root causes of terrorism.

13. The view was also expressed that the purpose of the proposed conference had been largely achieved by the General Assembly debate on measures to eliminate international terrorism, held in early October 2001. It was further pointed out that, following the important measures recently adopted by the Security Council in this field, the General Assembly should, for its part, discharge its responsibility by concentrating on attaining concrete results in the Sixth Committee.

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Agenda item 161
Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Draft resolution

Enlargement of the membership of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 3108 (XXVIII) of 12 December 1973, by which it increased the membership of the Commission from twenty-nine to thirty-six States,

Taking note of the recommendation of the Commission that its membership should be increased maintaining the current proportion between the regional groups,[1]

Convinced that wider participation of States in the work of the United Nations Commission on International Trade Law would further the progress of the work of the Commission,

Having considered comments by States, as well as a report by the Secretary-General,[2] on the implications of increasing the membership of the Commission, submitted pursuant to paragraph 13 of General Assembly resolution 55/151 of 12 December 2000,[3]

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[1] See *Official Records of the Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 375.
[2] A/56/315.
[3] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 370.

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Being satisfied with the practice of the Commission to invite States not members of the Commission and relevant intergovernmental and international non-governmental organizations to participate as observers in sessions of the Commission and its working groups and to take part in the formulation of texts by the Commission, as well as with the practice of reaching decisions by consensus without a formal vote,

Considering that the increase in the membership of the Commission may stimulate interest in the work of the Commission and better justify the dedication of human and other resources to preparation for and attendance at its meetings,

Observing that the considerable number of States that have participated as observers and made valuable contributions to the work of the Commission indicates that there exists an interest in active participation in the Commission beyond the current thirty-six Member States,

Reaffirming the importance of the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General,

1. *Notes* that the impact of an increase of the membership of the United Nations Commission on International Trade Law on the Secretariat services required to properly facilitate the work of the Commission would not be material enough to quantify, and that therefore the increase would have no financial implications;

2. *Decides* to increase the membership of the United Nations Commission on International Trade Law from thirty-six to sixty States;

3. *Decides also* that the twenty-four additional members of the Commission shall be elected by the General Assembly during its fifty-seventh session in accordance with the following rules:

(a) The General Assembly shall observe the following distribution of seats:

(i) Six from African States;

(ii) Five from Asian States;

(iii) Three from Eastern European States;

(iv) Four from Latin American and Caribbean States;

(v) Six from Western European and other States;

(b) Of the twenty-four additional members, the terms of eleven members shall expire on the last day prior to the opening of the thirty-seventh session of the Commission, in 2004, while the term of thirteen members shall expire on the last day prior to the opening of the fortieth session of the Commission, in 2007; the President of the General Assembly shall, by drawing lots, select these members as follows:

(i) For a term up to the last day prior to the thirty-seventh session of the Commission, in 2004:

a. Three from those elected from African States and three from those elected from Western European and other States;

b. Two from those elected from Asian States and two from those elected from Latin American and Caribbean States;

c. One from those elected from Eastern European States;

(ii) For a term up to the last day prior to the fortieth session of the Commission, in 2007:

a. Three from those elected from African States, three from those elected from Asian States and three from those elected from Western European and other States;

b. Two from those elected from Eastern European States and two from those elected from Latin American and Caribbean States;

(c) The twenty-four additional members shall take office on 1 January 2003;

(d) The provisions of section II, paragraphs 4 and 5, of General Assembly resolution 2205 (XXI) shall also apply to the additional members;

4. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General;

5. *Requests* the Commission at its fortieth session to evaluate the effects of the present enlargement and to examine and report to the General Assembly on the implications of enlarging the membership of the Commission to 72 States.

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Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Draft resolution

Model Law on Electronic Signatures of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law, with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade,

Noting that an increasing number of transactions in international trade are carried out by means of communication commonly referred to as electronic commerce, which involves the use of alternatives to paper-based forms of communication, storage and authentication of information,

Recalling the recommendation on the legal value of computer records adopted by the Commission at its eighteenth session, in 1985, and paragraph 5 (b) of General Assembly resolution 40/71 of 11 December 1985, in which the Assembly called upon Governments and international organizations to take action, where appropriate, in conformity with the recommendation of the Commission,[1] so as to ensure legal security in the context of the widest possible use of automated data processing in international trade,

Recalling also the Model Law on Electronic Commerce adopted by the Commission at its twenty-ninth session, in 1996,[2] complemented by an additional article 5 bis adopted by the Commission at its thirty-first session, in 1998,[3] and

[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), chap. VI, sect. B.
[2] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), para. 209.
[3] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17), chap. III, B.

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paragraph 2 of General Assembly resolution 51/162 of 16 December 1996, in which the Assembly recommended that all States should give favourable consideration to the Model Law when enacting or revising their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information,

Convinced that the Model Law on Electronic Commerce is of significant assistance to States in enabling or facilitating the use of electronic commerce, as demonstrated by the enactment of that Model Law in a number of countries and its universal recognition as an essential reference in the field of electronic commerce legislation,

Mindful of the great utility of new technologies used for personal identification in electronic commerce and commonly referred to as electronic signatures,

Desiring to build on the fundamental principles underlying article 7 of the Model Law on Electronic Commerce[4] with respect to the fulfilment of the signature function in an electronic environment, with a view to promoting reliance on electronic signatures for producing legal effect where such electronic signatures are functionally equivalent to handwritten signatures,

Convinced that legal certainty in electronic commerce will be enhanced by the harmonization of certain rules on the legal recognition of electronic signatures on a technologically neutral basis and by the establishment of a method to assess in a technologically neutral manner the practical reliability and the commercial adequacy of electronic signature techniques,

Believing that the Model Law on Electronic Signatures will constitute a useful addition to the Model Law on Electronic Commerce and significantly assist States in enhancing their legislation governing the use of modern authentication techniques and in formulating such legislation where none currently exists,

Being of the opinion that the establishment of model legislation to facilitate the use of electronic signatures in a manner acceptable to States with different legal, social and economic systems could contribute to the development of harmonious international economic relations,

1. *Express its appreciation* to the United Nations Commission on International Trade Law for completing and adopting the Model Law on Electronic Signatures contained in the annex to the present resolution and for preparing the Guide to Enactment of the Model Law;

2. *Recommends* that all States give favourable consideration to the Model Law on Electronic Signatures, together with the Model Law on Electronic Commerce adopted in 1996[2] and complemented in 1998,[3] when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based forms of communication, storage and authentication of information;

3. *Recommends also* that all efforts be made to ensure that the Model Law on Electronic Commerce and the Model Law on Electronic Signatures, together with their respective Guides to Enactment, become generally known and available.

[4] General Assembly resolution 51/162, annex.

Annex

Model Law on Electronic Signatures of the United Nations Commission on International Trade Law

Article 1
Sphere of application

This Law applies where electronic signatures are used in the context[5] of commercial[6] activities. It does not override any rule of law intended for the protection of consumers.

Article 2
Definitions

For the purposes of this Law:

(a) "Electronic signature" means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message;

(b) "Certificate" means a data message or other record confirming the link between a signatory and signature creation data;

(c) "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(d) "Signatory" means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

(e) "Certification service provider" means a person that issues certificates and may provide other services related to electronic signatures;

(f) "Relying party" means a person that may act on the basis of a certificate or an electronic signature.

Article 3
Equal treatment of signature technologies

Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies

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[5] The Commission suggests the following text for States that might wish to extend the applicability of this Law:

"This Law applies where electronic signatures are used, except in the following situations: [...]."

[6] The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

Article 4
Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 5
Variation by agreement

The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law.

Article 6
Compliance with a requirement for a signature

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:

(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

(b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

(d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

4. Paragraph 3 does not limit the ability of any person:

(a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or

(b) To adduce evidence of the non-reliability of an electronic signature.

5. The provisions of this article do not apply to the following: [...].

Article 7
Satisfaction of article 6

1. [*Any person, organ or authority, whether public or private, specified by the enacting State as competent*] may determine which electronic signatures satisfy the provisions of article 6 of this Law.

2. Any determination made under paragraph 1 shall be consistent with recognized international standards.

3. Nothing in this article affects the operation of the rules of private international law.

Article 8
Conduct of the signatory

1. Where signature creation data can be used to create a signature that has legal effect, each signatory shall:

(a) Exercise reasonable care to avoid unauthorized use of its signature creation data;

(b) Without undue delay, utilize means made available by the certification service provider pursuant to article 9 of this Law, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

(i) The signatory knows that the signature creation data have been compromised; or

(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

(c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

2. A signatory shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 9
Conduct of the certification service provider

1. Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:

(a) Act in accordance with representations made by it with respect to its policies and practices;

(b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its life cycle or that are included in the certificate;

(c) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:

(i) The identity of the certification service provider;

(ii) That the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;

(iii) That signature creation data were valid at or before the time when the certificate was issued;

(d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:

(i) The method used to identify the signatory;

(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;

(iii) That the signature creation data are valid and have not been compromised;

(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;

(v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law;

(vi) Whether a timely revocation service is offered;

(e) Where services under subparagraph (d) (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law and, where services under subparagraph (d) (vi) are offered, ensure the availability of a timely revocation service;

(f) Utilize trustworthy systems, procedures and human resources in performing its services.

2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 10
Trustworthiness

For the purposes of article 9, paragraph 1 (f), of this Law in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

(a) Financial and human resources, including existence of assets;

(b) Quality of hardware and software systems;

(c) Procedures for processing of certificates and applications for certificates and retention of records;

(d) Availability of information to signatories identified in certificates and to potential relying parties;

(e) Regularity and extent of audit by an independent body;

(f) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or

(g) Any other relevant factor.

Article 11
Conduct of the relying party

A relying party shall bear the legal consequences of its failure:

(a) To take reasonable steps to verify the reliability of an electronic signature; or

(b) Where an electronic signature is supported by a certificate, to take reasonable steps:

(i) To verify the validity, suspension or revocation of the certificate; and

(ii) To observe any limitation with respect to the certificate.

Article 12
Recognition of foreign certificates and electronic signatures

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:

(a) To the geographic location where the certificate is issued or the electronic signature created or used; or

(b) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as a certificate issued in [*the enacting State*] if it offers a substantially equivalent level of reliability.

3. An electronic signature created or used outside [*the enacting State*] shall have the same legal effect in [*the enacting State*] as an electronic signature created or used in [*the enacting State*] if it offers a substantially equivalent level of reliability.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

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Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Draft resolution

United Nations Convention on the Assignment of Receivables in International Trade

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Considering that problems created by uncertainties as to the content and the choice of the legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Convinced that the adoption of a convention on the assignment of receivables in international trade will enhance transparency, contribute to overcoming the problems of uncertainties in this field and promote the availability of capital and credit at more affordable rates, while protecting existing assignment practices and facilitating the development of new practices, as well as ensuring adequate protection of the interests of debtors in assignments of receivables,

Recalling that, at its twenty-eighth session in 1995, the Commission decided to prepare uniform legislation on assignment in receivables financing and entrusted the Working Group on International Contract Practices with the preparation of a draft,[1]

Noting that the Working Group on International Contract Practices devoted nine sessions, from 1995 to 2000, to the preparation of the draft Convention on the Assignment of Receivables in International Trade, and that the Commission

[1] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (A/50/17), para. 381.

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considered the draft Convention at its thirty-third session in 2000 and at its thirty-fourth session in 2001,

Being aware that all States and interested international organizations were invited to participate in the preparation of the draft Convention at all the sessions of the Working Group and at the thirty-third and thirty-fourth sessions of the Commission, either as members or as observers, with a full opportunity to speak and make proposals,

Noting with satisfaction that the text of the draft Convention was circulated for comments once before the thirty-third session of the Commission and a second time in its revised version before the thirty-fourth session of the Commission to all Governments and international organizations invited to attend the meetings of the Commission and the Working Group as observers, and that the comments received were before the Commission respectively at its thirty-third and thirty-fourth sessions,[2]

Taking note with satisfaction of the decision of the Commission at its thirty-fourth session to submit the draft Convention to the General Assembly for its consideration,[3]

Taking note of the draft Convention on the Assignment of Receivables in International Trade adopted by the Commission,[4]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for preparing the draft Convention on the Assignment of Receivables in International Trade;[4]

2. *Adopts and opens for signature or accession* the United Nations Convention on the Assignment of Receivables in International Trade, contained in the annex to the present resolution;

3. *Calls upon* all Governments to consider becoming party to the Convention.

Annex

United Nations Convention on the Assignment of Receivables in International Trade

Preamble

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

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[2] The texts of the comments are contained in documents A/CN.9/472 and Add.1-5 and A/CN.9/490 and Add.1-5.

[3] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 200.

[4] Ibid., annex I.

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

Chapter I
Scope of application

Article 1
Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2
Assignment of receivables

For the purposes of this Convention:

(a) "Assignment" means the transfer by agreement from one person ("assignor") to another person ("assignee") of all or part of or an undivided interest in the assignor's contractual right to payment of a monetary sum ("receivable") from a third person ("the debtor"). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee ("subsequent assignment"), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3
Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4
Exclusions

1. This Convention does not apply to assignments made:

(a) To an individual for his or her personal, family or household purposes;

(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

Chapter II
General provisions

Article 5
Definitions and rules of interpretation

For the purposes of this Convention:

(a) "Original contract" means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) "Existing receivable" means a receivable that arises upon or before conclusion of the contract of assignment and "future receivable" means a receivable that arises after conclusion of the contract of assignment;

(c) "Writing" means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing;

(d) "Notification of the assignment" means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) "Insolvency administrator" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor's assets or affairs;

(f) "Insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) "Priority" means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements

necessary to render the right effective against a competing claimant have been satisfied;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) "Law" means the law in force in a State other than its rules of private international law;

(j) "Proceeds" means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) "Financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) "Netting agreement" means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

(m) "Competing claimant" means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;

(ii) A creditor of the assignor; or

(iii) The insolvency administrator.

Article 6
Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective

rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7
Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Chapter III
Effects of assignment

Article 8
Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9
Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10
Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

Chapter IV
Rights, obligations and defences

Section I
Assignor and assignee

Article 11
Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12
Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13
Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14
Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II
Debtor

Article 15
Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:

(a) The currency of payment specified in the original contract; or

(b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16
Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17
Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18
Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19
Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:

(a) Arising from fraudulent acts on the part of the assignee; or

(b) Based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20
Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

(a) The assignee consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21
Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III
Third parties

Article 22
Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23
Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24
Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25
Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

Chapter V
Autonomous conflict-of-laws rules

Article 26
Application of chapter V

The provisions of this chapter apply to matters that are:

(a) Within the scope of this Convention as provided in article 1, paragraph 4; and

(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27
Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is concluded.

2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28
Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29
Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30
Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31
Mandatory rules

1. Nothing in articles 28 and 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 28 and 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32
Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

Chapter VI
Final provisions

Article 33
Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34
Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35
Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36
Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37
Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38
Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring ("the Ottawa Convention"). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39
Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

Article 40
Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41
Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42
Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:

(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which assignments made before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to

designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43
Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the

declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44
Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46
Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a

longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47
Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Annex to the Convention

Section I
Priority rules based on registration

Article 1
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the

assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II
Registration

Article 3
Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4
Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5
Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III
Priority rules based on the time of the contract of assignment

Article 6
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8
Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV
Priority rules based on the time of notification of assignment

Article 9
Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10
Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received

by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at ..., this ... day of ... two thousand one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

United Nations A/C.6/56/L.12/Corr.1

General Assembly

Distr.: Limited
16 November 2001

Original: English

Fifty-sixth session
Sixth Committee
Agenda item 161
Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Draft resolution

United Nations Convention on the Assignment of Receivables in International Trade

Corrigendum

Annex

1. **Article 4**

   The title of the article *should read* Exclusions and other limitations

2. **Article 31, paragraph 1**

   For 28 and 29 *read* 27 to 29

3. **Article 31, paragraph 2**

   For 28 and 29 *read* 27 to 29

4. **Article 42, paragraph 3**

   For assignments made *read* contracts of assignment concluded

United Nations A/C.6/56/L.13

General Assembly

Distr.: Limited
7 November 2001

Original: English

Fifty-sixth session
Agenda item 159
United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Draft resolution

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Taking note with appreciation of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law[1] and the guidelines and recommendations on future implementation of the Programme which were adopted by the Advisory Committee on the Programme and are contained in section III of that report,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

Noting with appreciation the efforts made by States at the bilateral level to provide assistance in the teaching and study of international law,

Convinced, nevertheless, that States and international organizations and institutions should be encouraged to give further support to the Programme and increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming its resolutions 2464 (XXIII) of 20 December 1968, 2550 (XXIV) of 12 December 1969, 2838 (XXVI) of 18 December 1971, 3106 (XXVIII) of 12 December 1973, 3502 (XXX) of 15 December 1975, 32/146 of 16 December 1977, 36/108 of 10 December 1981 and 38/129 of 19 December 1983, in which it stated or recalled that in the conduct of the Programme it was desirable to use as far as possible the resources and facilities made available by Member States, international organizations and others, as well as its resolutions 34/144 of 17 December 1979, 40/66 of 11 December 1985, 42/148 of 7 December 1987, 44/28 of 4 December

[1] A/56/484.

01-62340 (E) 071101

1989, 46/50 of 9 December 1991 and 48/29 of 9 December 1993, in which, in addition, it expressed or reaffirmed the hope that, in appointing lecturers for the seminars to be held within the framework of the fellowship programme in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

Welcoming the establishment of the United Nations Audiovisual Library in International Law,

1. *Approves* the guidelines and recommendations contained in section III of the report of the Secretary-General[1] and adopted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular those designed to achieve the best possible results in the administration of the Programme within a policy of maximum financial restraint;

2. *Authorizes* the Secretary-General to carry out in 2002 and 2003 the activities specified in his report, including the provision of:

(a) A number of international law fellowships in both 2002 and 2003, to be determined in the light of the overall resources for the Programme and to be awarded at the request of Governments of developing countries;

(b) A minimum of one scholarship in both 2002 and 2003 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, subject to the availability of new voluntary contributions made specifically to the fellowship fund;

(c) Subject to the overall resources for the Programme, assistance in the form of a travel grant for one participant from each developing country, who would be invited to possible regional courses to be organized in 2002 and 2003;

and to finance the above activities from provisions in the regular budget, when appropriate, as well as from voluntary financial contributions earmarked for each of the activities concerned, which would be received as a result of the requests set out in paragraphs 12 to 14 below;

3. *Expresses its appreciation* to the Secretary-General for his constructive efforts to promote training and assistance in international law within the framework of the Programme in 2000 and 2001, in particular for the organization of the thirty-sixth[2] and thirty-seventh[3] sessions of the International Law Seminar, held at Geneva in 2000 and 2001, respectively, and for the activities of the Office of Legal Affairs of the Secretariat related to the fellowship programme in international law and to the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, carried out, respectively, through its Codification Division and its Division for Ocean Affairs and the Law of the Sea;

4. *Requests* the Secretary-General to consider the possibility of admitting, for participation in the various components of the Programme, candidates from countries willing to bear the entire cost of such participation;

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[2] See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), chap. IX, sect. E.

[3] Ibid., *Fifty-sixth Session, Supplement No. 10* (A/56/10), chap. IX, sect. E.

5. *Also requests* the Secretary-General to consider the relative advantages of using available resources and voluntary contributions for regional, subregional or national courses, as against courses organized within the United Nations system;

6. *Further requests* the Secretary-General to continue to provide the necessary resources to the programme budget for the Programme for the next and the future bienniums with a view to maintaining the effectiveness of the Programme;

7. *Welcomes* the efforts undertaken by the Office of Legal Affairs to bring up to date the United Nations *Treaty Series* and the *United Nations Juridical Yearbook*, as well as efforts made to place on the Internet the *Treaty Series* and other legal information;

8. *Expresses its appreciation* to the United Nations Institute for Training and Research for its participation in the Programme through the activities described in the report of the Secretary-General;

9. *Also expresses its appreciation* to the United Nations Educational, Scientific and Cultural Organization for its participation in the Programme through the activities described in the report of the Secretary-General;

10. *Further expresses its appreciation* to The Hague Academy of International Law for the valuable contribution it continues to make to the Programme, which has enabled candidates under the fellowship programmes in international law to attend and participate in the Programme in conjunction with the Academy courses;

11. *Notes with appreciation* the contributions of The Hague Academy of International Law to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer courses, regional courses and programmes of the Centre for Studies and Research in International Law and International Relations;

12. *Requests* the Secretary-General to continue to publicize the Programme and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme or otherwise to assist in its implementation and possible expansion;

13. *Reiterates its request* to Member States and to interested organizations and individuals to make voluntary contributions, inter alia, for the International Law Seminar, the fellowship programme in international law, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and the United Nations Audiovisual Library in International Law, and expresses its appreciation to those Member States, institutions and individuals which have made voluntary contributions for this purpose;

14. *Urges* in particular all Governments to make voluntary contributions for the organization of regional refresher courses in international law by the United Nations Institute for Training and Research, especially with a view to covering the amount needed for the financing of the daily subsistence allowance for up to twenty-five participants in each regional course, thus alleviating the burden on prospective

host countries and making it possible for the Institute to continue to organize the regional courses;

15. *Requests* the Secretary-General to report to the General Assembly at its fifty-eighth session on the implementation of the Programme during 2002 and 2003 and, following consultations with the Advisory Committee on the Programme, to submit recommendations regarding the execution of the Programme in subsequent years;

16. *Decides* to include in the provisional agenda of its fifty-eighth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

United Nations A/C.6/56/L.14

General Assembly

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6 November 2001

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Fifty-sixth session
Sixth Committee
Agenda item 165
Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Egypt: draft resolution

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly,

Recalling its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its relevant resolutions adopted at subsequent sessions,

Recalling also its resolution 47/233 of 17 August 1993 on the revitalization of the work of the General Assembly,

Recalling further its resolution 47/62 of 11 December 1992 on the question of equitable representation on and increase in the membership of the Security Council,

Taking note of the report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council,[1]

Recalling the elements relevant to the work of the Special Committee contained in its resolution 47/120 B of 20 September 1993,

Recalling also its resolutions 51/241 of 31 July 1997 on the strengthening of the United Nations system and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", by which it adopted the texts on coordination and the question of sanctions imposed by the United Nations, which are annexed to that resolution,

[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 47* (A/55/47).

01-62276 (E) 061101

Recalling further that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

Considering the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its increased workload,

Taking note of the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*,[2]

Recalling its resolution 55/156 of 12 December 2000,

Having considered the report of the Special Committee on the work of its session held in 2001,[3]

1. *Takes note* of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[3]

2. *Decides* that the Special Committee shall hold its next session from 18 to 28 March 2002;

3. *Requests* the Special Committee, at its session in 2002, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995:

(a) To continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in this context, to consider other proposals relating to the maintenance of international peace and security already submitted or which may be submitted to the Special Committee at its session in 2002;

(b) To continue to consider on a priority basis the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, by commencing substantive debate on all of the related reports of the Secretary-General,[4] the proposals submitted on this subject, taking into consideration the debate on the question which was held by the Sixth Committee at the fifty-sixth session of the General Assembly and the text on the question of sanctions imposed by the United Nations contained in annex II to Assembly resolution 51/242, and also the implementation of the provisions of Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999 and 55/157 of 12 December 2000;

(c) To continue its work on the question of the peaceful settlement of disputes between States and, in this context, to continue its consideration of proposals relating to the peaceful settlement of disputes between States, including the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes and those proposals relating to the enhancement of the role of the International Court of Justice;

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[2] A/56/330.

[3] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33).

[4] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1 and A/56/303.

(d) To continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with General Assembly resolution 50/55 of 11 December 1995,[5] the report of the Secretary-General entitled "Renewing the United Nations: a programme for reform"[6] and the views expressed by States on this subject at the previous sessions of the General Assembly;

(e) To continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation;

4. *Takes note* of subparagraphs (a) to (r) of paragraph 47 of the report of the Secretary-General,[2] commends the Secretary-General for his continued efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs*, and endorses the efforts of the Secretary-General to eliminate the backlog in the publication of the *Repertoire of the Practice of the Security Council*;

5. *Invites* the Special Committee at its session in 2002 to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations;

6. *Takes note* of the readiness of the Special Committee, in the context of its consideration of the subject of assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization, to provide, within its mandate, such assistance as may be sought at the request of other subsidiary bodies of the General Assembly in relation to any issues before them;

7. *Requests* the Special Committee to submit a report on its work to the General Assembly at the fifty-seventh session;

8. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

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[5] A/50/1011.

[6] A/51/950 and Add.1-7.